



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. Complaint No. RERA-PKL-902 of 2020

Urmila Agarwal

...Complainant

Versus

SRS Real Estate Ltd.

...Respondent

## 2. Complaint No. RERA-PKL-904 of 2020

Sakshi Gupta

...Complainant

Versus

SRS Real Estate Ltd.

...Respondent

## 3. Complaint No. RERA-PKL-905 of 2020

Mukti Agarwal

...Complainant

Versus

SRS Real Estate Ltd.

...Respondent

## 4. Complaint No. RERA-PKL-906 of 2020

Suman Agarwal

...Complainant

Versus

SRS Real Estate Ltd.

...Respondent

**5. Complaint No. RERA-PKL-907 of 2020**

Nidhi Agarwal ...Complainant

Versus

SRS Real Estate Ltd. ...Respondent

**6. Complaint No. RERA-PKL-913 of 2020**

Rajni Gupta ...Complainant

Versus

SRS Real Estate Ltd. ...Respondent

**7. Complaint No. RERA-PKL-914 of 2020**

Birma Devi ...Complainant

Versus

SRS Real Estate Ltd. ...Respondent

**8. Complaint No. RERA-PKL-915 of 2020**

Swati Gupta ...Complainant

Versus

SRS Real Estate Ltd. ...Respondent

**CORAM: Rajan Gupta Chairman**  
**Dilbag Singh Sihag Member**

**Date of hearing:** 04.05.2022

**Hearing:** 3<sup>rd</sup>

**Present through video conference: -**

Mr. Venkat Rao, Advocate  
Ld. Counsel for the complainants  
None for the respondent



**ORDER: (RAJAN GUPTA-CHAIRMAN)**

All the captioned complaints have been taken up together for hearing as they pertain to the same project of the respondent. Moreover, facts and prayers of these complaints are identical in this bunch of complaint cases. Therefore, facts of complaint no. 902 of 2020 are taken into consideration for passing this order.

2. While perusing case file, it is observed that complainant was allotted a Flat no. C4/08/88/804 admeasuring super area of 1304 sq. ft. in the project namely "SRS RESIDENCY", Sector-88, Faridabad, Haryana to be developed by the respondent company. Allotment cum Builder buyer agreement was executed between both the parties on 15.03.2009, copy of which is placed on record at Annexure C/2 and as per clause 27(a) of the agreement, possession was supposed to be handed over by 30.06.2010 with an extended period of six months. However, possession has not been offered by the respondent company till date. Basic sale price of the unit was fixed as ₹16,95,200/- against which complainant has already paid an amount of ₹24,51,954/- to the respondent company. Copies of all the receipts are placed at Annexure C/1 (colly) at page nos. 25-34 of complaint book. It is alleged by the complainant that despite taking payment of more than total sale consideration, the respondent remained failed to complete the project. Seeing no hope of completion of the Project,



complainants demanded refund of the money paid along with interest and suitable compensation.

3. Notice was sent to the respondent. Despite successful service of notice upon respondent through Jail Superintendent, respondent had opted not to appear nor any reply has been filed. Therefore, it is ordered to be proceeded against ex-parte.

4. Complainants have sought relief of refund of the amount already paid to the respondent for purchase of flats in respondent's project. Initially jurisdiction of this Authority to adjudicate upon relief of refund sought by complainant was subjudice before Hon'ble Supreme Court in SLP No. 13005 of 2020 titled as M/S. SANA Realtors Pvt. Ltd. vs. Union of India and SLP No. 13238 – 13256 of 2020, the cases in which refund has been sought were adjourned sine die. Although no specific stay was granted in respect of present respondent promoter, Authority by way of abundant caution had decided not to deal with such matters for the time being and decided to await the outcome of SLPs relating to Haryana matters pending before Hon'ble Apex Court. Now the law laid down by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and other matters, has been further clarified by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, therefore, the Authority has passed a resolution no.6705-6709 dated 14.01.2022 which has been hosted



on the website of the Authority. Relevant part of aforesaid resolution is reproduced as below:

“ 4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.

Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund



amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly."

5. After the question of jurisdiction having been settled and in view of above resolution, since no specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court in present matter, Authority decides to proceed further for adjudication of the present complaints.

6. Authority after going through written submissions of complainant, observes that complainant had booked flat in the year 2009. Basic sale consideration of flat was fixed ₹16,95,200/- against complainant had paid ₹24,51,954/- which is more than basic sale price. Receipts duly issued by the respondent has been placed on record at Annexure C/1 as proof of payments. Perusal of copy of allotment cum buyer's agreement dated 15.03.2009 placed at Annexure C/2 reveals that respondent was obliged to hand over possession by



June 2010. Despite making payment of more than basic sale price, the complainant is eagerly waiting for possession of his flat.

7. Authority observes that Directors of respondent company are confined in jail. They have failed to assist the Authority. Complainant alleges that project is not complete till date nor likely to be completed in near future as Directors of respondent company are confined in jail. Respondents are also not able to prove their case. Admittedly, this is a stuck project and there is no hope of its completion. Despite receiving payment from the complainant, respondent has not obliged its duty to offer possession to the complainant. In light of above facts, it is considered view of the Authority that inordinate delay of twelve years has been taken place, neither project has been completed, nor possession has been offered. Authority cannot keep complainants waiting endlessly. It has been observed by the Authority that properties of the respondent company have already been attached by Enforcement Directorate, insolvency proceedings are also going on and the competent authority has already revoked the license issued for the project in question. In these circumstances, there is no likelihood of completion of the project.

So, the present complaints are fit for allowing refund of the paid amount along with interest.

8. In view of above findings, case is clearly made out to allow relief of refund as sought by the complainant. So, complaint deserves to be allowed.

Principal amount will be refunded to the complainants along with interest payable at the rate of MCLR plus 2% as was on the date of passing this order.

The respondents shall refund the principal amount along with interest to each of the complainant as calculated by Accounts Department of the Authority and shown in the table below:

Sr. No.	COMPLAINT NO.	TOTAL AMOUNT PAID BY THE COMPLAINANT	INTEREST @9.40% TO BE PAID BY RESPONDENT	TOTAL PAYABLE AMOUNT
1.	902 of 2020	₹24,51,954/-	₹32,11,357/-	₹56,63,311/-
2.	904 of 2020	₹33,55,662/-	₹43,81,420/-	₹77,37,082/-
3.	905 of 2020	₹24,51,954/-	₹31,85,453/-	₹56,37,407/-
4.	906 of 2020	₹24,51,954/-	₹32,21,315/-	₹56,73,269/-
5.	907 of 2020	₹33,90,662/-	₹44,38,887/-	₹78,29,549/-
6.	913 of 2020	₹24,51,954/-	₹35,31,278/-	₹59,83,232/-
7.	914 of 2020	₹24,51,954/-	₹31,98,645/-	₹56,50,599/-
8.	915 of 2020	₹24,51,954/-	₹32,48,463/-	₹57,00,417/-

9. Respondent shall pay the entire amount within 90 days in two equal instalments of which first instalment will be paid within 45 days and the next within 45 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website of the Authority. In the circumstances that the Directors of the respondent company are in Jail and they are facing multiple criminal proceedings, there will be a challenge in getting these orders executed. It is ordered that the appropriate mode of execution of the orders as prescribed in the RERA Act, 2016 shall be available to the complainants.





10. The Authority in another bunch matter with lead case **Complaint No. 383 of 2018 Gurbaksh Singh & Another Versus ABW Infrastructure Pvt. Ltd.** has passed a detailed order for protecting the interests of allottees in real estate projects which get stuck due to misdeeds of the promoters and face serious financial difficulties. The Authority has ordered that if there are multiple claims against the assets of respondent company, the claims of the complainant/allottee shall be served first of all on in preference to any other claim including the claims of the lending financial institutions or other financial creditors. The reasoning and logic cited in that complaint shall be applicable as it is in these cases as well. Accordingly, the complainants may present this order before any appropriate Authority dealing with disposal of the assets of the respondent company for serving his claims first of all on priority.
11. Cases are **disposed of** accordingly and files be consigned to record room after uploading of order on the website of the Authority.

  
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(RAJAN GUPTA)  
CHAIRMAN

  
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(DILBAG SINGH SIHAG)  
MEMBER